**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**

**AT JODHPUR**

: J U D G M E N T :

MEGH RAJ VS. STATE OF RAJASTHAN

**D.B. CRIMINAL APPEAL NO. 1147/2003**
against the judgment dated 24.9.2003 passed by the learned Additional Sessions Judge No.2, Sri Ganganagar-camp-Suratgarh in Sessions Case No.28/2002.

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DATE OF JUDGMENT :: 3.1.2006

**PRESENT**

**HON'BLE MR. N.N. MATHUR, J.**
**HON'BLE MR. MANAK MOHTA, J.**

Mr. R.S. Gill, for the appellant.
Mr. Vishnu Kachhwaha, Public Prosecutor.

**BY THE COURT : (PER HON`BLE N.N. MATHUR, J.)**

1. The instant appeal is directed against the judgment dated 4.8.2002 passed by the Additional Sessions Judge No.2, Sri Ganganagar-camp-Suratgarh convicting the appellant-Meghraj of offence under Section 302 I.P.C. and sentencing to imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine, to further undergo two months' rigorous imprisonment.

2. The factual scenario as emerged from the record of case is that in Village Nagalia, about 8 families closely related to each of Nai community lived and carried the occupation of agriculture. It is alleged

that the appellant-Meghraj took up a quarrel with deceased-Krishan Lal while he was engaged in digging earth. It is further alleged that the appellant-Meghraj gave a 'kassi' blow on the head of Krishan Lal. He succumbed to the injuries while he was on way to hospital at Sri Ganganagar. An FIR of the incident was lodged by his brother PW-6 Ranveer at P.S. Suratgarh stating inter alia that while he was grazing cattles in the nearby field, at about 12 noon, his son PW-10 Shailendra alongwith PW-16 Sonu arrived there and informed that the appellant-Meghraj inflicted 'Kassi' blow on the head of Krishan Lal. He was taken to hospital in a tractor by PW-13 Chokhu Ram, PW-14 Hans Raj and PW-15 Hari Ram. The police after usual investigation laid charge-sheet against the appellant for the offence under Section 302 I.P.C.

3. The appellant denied the charges levelled against him and claimed trial. During trial, prosecution produced oral and documentary evidence. The appellant denied the correctness of the prosecution evidence appearing against him in his statements recorded under Section 313 Cr. P.C. He stated that on the date of the incident, while he was working in his field to provide water from the 'khala' (drainage), the deceased-Krishan Lal damaged the water supply to his field, which led to an altercation between them. The deceased picked up his testicles and pressed them, as such he pushed him, on account of which he fell down on bricks lying on the earth and as a result thereof, he sustained grievous injuries resulting into his death. He pleaded innocence. He also stated that he has been falsely implicated.

4. The trial court found the prosecution case proved and accordingly convicted and sentenced the appellant, in the manner indicated above. Assailing the judgment of the trial court, it is submitted by the learned counsel for the appellant that the trial court has failed to appreciate the material evidence in its right perspective. Learned counsel has pointed out certain infirmities in the statements of the witnesses of occurrence. In alternate, it is submitted that on the facts of the case the conviction of the appellant does not travel beyond Section 304/II I.P.C. On the other hand, learned Public Prosecutor has supported the judgment of the trial court.

5. On analysing the evidence, it appears that the deceased and the appellant belongs to one family. Deceased-Krishan Lal and PW-6 Ranveer are the brothers. PW-7 Smt. Indira is the wife of the deceased-Krishan Lal. PW-10 Shailendra is the son of PW-6 Ranveer. PW-16 Sonu is the son of PW-14 Hans Raj. PW-1 Ranjeet Singh, PW-2 Bhoj Raj, PW-3 Prakash, PW-4 Ramesh Lal, PW-5 Shashipal, PW-12 Gopal, PW-13 Chokhu Ram, PW-14 Hans Raj, PW-15 Hari Ram and PW-16 Sonu have not supported the prosecution case and as such all of them have been declared hostile. The prosecution case rests on the testimony of PW-7 Indira and PW-10 Shailendra, supported by the statement of PW-6 Ranveer.

6. **PW-7 Smt. Indira** is the wife of deceased-Krishan Lal. He identified the appellant as her brother-in-law (elder brother of the

deceased). She stated that on 4.8.2002, at about 11 O' clock her husband was taking water from the 'khala' (drainage). She was attracted by the outcry of her husband. She found that the appellant-Meghraj was giving a 'kassi' blow on the head of her husband. At that time, she was on way taking tea for her husband. At that time, PW-13 Chokhu Ram, PW-15 Hari Ram and PW-14 Hans Raj all the three exhorted Meghraj to assault Krishan Lal. On reaching near the injured, she was told that a 'kassi' blow was given by the appellant-Meghraj. She send her son-Shailendra to inform her younger brother Hans Raj about the incident. Hans Raj, Chokhraj and Hari Ram took the injured to the hospital against her wishes. She came to know about the death of her husband in the evening. In cross-examination, she admitted that the incident has taken place all of a sudden. She also admitted that bricks were lying at the place of incidence.

7. **PW-10 Shailendra** is a child witness of 9 years. He is the son of PW-6 Ranveer. The trial court after ascertaining the capacity and understanding of the witness to answer the questions, in a rational way proceeded to record his statement. He also identified appellant-Meghraj as his uncle. He stated that on the date of incident, he was playing in the field alongwith Sonu (PW-16). The deceased-Krishan Lal was also in the field. The appellant-Meghraj gave a 'kassi' blow on the head of his uncle-Krishan Lal. He further stated that his mother Mst. Indira was also in the field. He was sent to inform about the incident to his father. He reported the incident to his father PW-6 Ranveer. In cross-examination, he

admitted that the relations between the appellant and the deceased were cordial.

8. **PW-6 Ranveer** has stated that on the date of the incident, he was grazing cattles in the field. At about 12' O clock, his son PW-10 Shailendra and PW-16 Sonu came there and informed that while Krishan Lal was digging earth, a quarrel took place with Meghraj. They also told him that appellant-Meghraj gave a 'kassi' blow on the head of Kishan Lal. He was taken to the hospital at Suratgarh. He went to the hospital at Suratgarh when he came to know that the deceased has been referred to the hospital at Sri Ganganagar. Later on he came to know from Seokaran that the deceased- Kishan Lal succumbed to the injuries while on the way to Sri Ganganagar. He has also proved the other police memos.

9. **PW-8 Dr. Vijay Prakash** stated that he conducted the autopsy of the dead-body of Kishan Lal and noticed the following injury :

> "Lacerated wound present on the right occipital region about 4" long, stitched".

He has also proved the post-mortem report (Exhibit-P/14). In his opinion the cause of death is coma due to compression of the brain resulting from the injury.

10. On analyzing the evidence of the two eye-witnesses i.e. PW-7 Mst. Indira and PW-10 Shailendra, we are satisfied that the account of

attack given by the prosecution is substantially correct. The evidence of the eye-witnesses is consistent and nothing has been brought to our notice from which any doubt may cast on their credibility. They have stood to the test of cross-examination well. Their statement finds corroboration from the statement of PW-6 Ranveer and it further finds corroboration from the medical evidence. Indeed the prosecution witnesses have tried to exaggerate the incident as to the part attributable to PW-13 Chokhu Ram, PW-14 Hans Raj and PW-15 Hari Ram in exhorting the appellant to assault the deceased but on that ground alone the entire prosecution case cannot be thrown out. The statements of both the eye- witnesses finds corroboration from the statement of PW-6 Ranveer. It further finds corroboration from the medical evidence referred to above. Thus, we are of the view that the appreciation of evidence by the trial court does not suffer from any infirmity.

11. Turning to the nature of offence, it has been admitted by the star prosecution witness PW-7 Mst. Indira that the incident had taken place all of a sudden. The appellant inflicted a single injury. He did not repeat the blow, thus it cannot be said that the appellant intended to cause a particular injury, which in ordinary course of nature was sufficient to cause death. In these circumstances, though the appellant can be attributed with the knowledge that by his act he was likely to cause death or cause bodily injury as is likely to cause death but it cannot be said that he intended to commit murder. The offence in such case would therefore be only culpable homicide not amounting to murder which is punishable

under Section 304 Part-II I.P.C.

Consequently, the appeal is partly allowed. The conviction of the appellant-Meghraj from Section 302 I.P.C. is altered to Section 304 Part-II, I.P.C. The sentence of imprisonment for life is substituted to a period of 7 years. The appellant is in jail. He will serve out the remaining part of the sentence.

**(MANAK MOHTA), J.** **(N.N. MATHUR), J.**

Sanjay/-